Supreme Court, U.S.
FILED
OCT 16 2008
OFFICE OF THE CLERK

No. 08-529

IN THE

Supreme Court of the United States

DR. RICHARD G. GRANT,

Petitioner,

—v.—

PHILIPPE DE MONTEBELLO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DR. RICHARD G. GRANT
22 Noel Court
Brewster, New York 10509
(845) 279-5387

Petitioner Pro Se

QUESTIONS PRESENTED

ISSUE FOR THE US. SUPREME COURT TO CONSIDER UPON REVIEW BASED UPON FULL DISCLOSURE OF THE RECORD IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THAT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN THE MATTER BROUGHT BY DR. RICHARD GRANT PLAINTIFF/APPELLANT:

Does demonstrated conduct by the Administrators and/or Board of Trustees of the New York Metropolitan Museum of Art ("Museum"), as such relates to seizure of looted art in violation of the 4th Amendment to the U.S. Constitution, namely art paintings acquired (seized) by the Museum during the Nazi period (1933-45) where provenance was not sufficiently established or otherwise documented, and the Museum's own written directives concerning investigation of provenance of such paintings acquired during the Nazi period ignored, thus directly contributing to the perpetual denial of the true title holder of his/her property, constitute an arguable basis in law or fact sufficient to hold the Administrators and/or Trustees liable for unlawful property seizure and form the basis for granting of relief to those established title holders, their heirs and assigns whose property was unlawfully seized.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Philippe de Montebello, Director, Metropolitan Museum of Art.

2. Board of Trustees, Metropolitan Museum of Art.

3. Alfred N. Prunnett Endowment Fund, Metropolitan Museum of Art, established during the Nazi occupation of Paris (6/40 – 8/45).

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STATEMENT OF THE CASE

ISSUE FOR THE U.S. SUPREME COURT TO CONSIDER UPON REVIEW BASED UPON FULL DISCLOSURE OF THE RECORD IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THAT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN THE MATTER BROUGHT BY DR. RICHARD GRANT PLAINTIFF/APPELLANT:

ISSUE: Does demonstrated conduct by the Administrators and/or Board of Trustees of the New York Metropolitan Museum of Art ("Museum"), as such relates to seizure of looted art in violation of the 4th Amendment to the U.S. Constitution, namely art paintings acquired (seized) by the Museum during the Nazi period (1938-45) where provenance was not sufficiently established or otherwise documented, and the Museum's own written directives concerning investigation of provenance of such paintings acquired during the Nazi period ignored, thus directly contributing to the perpetual denial of the true title holder of his/her property, constitute an arguable basis in law or fact sufficient to hold the Administrators and/or Trustees liable for unlawful property seizure and form the basis for granting of relief to those established title holders, their heirs and assigns whose property was unlawfully seized.

REASONS FOR GRANTING THE PETITION

"Looted Art"

The Supreme Court of the United States should grant certiorari in this case due to the fact that the Metropolitan Museum of Art was in violation of the 4th Amendment to the United States Constitution, in that, they unlawfully seized property i.e. art without proper safeguard.

HISTORY

Appellant brought an action pro se in the US District Court for the Southern District of New York on March 20, 2008, asserting claims against the Director and Board of Trustees, et al. of the Metropolitan Museum of Art ("the Museum") under the Fourth Amendment to the United States Constitution for "illegal seizure of looted art". The complaint was dismissed sua sponte by United State District Judge Loretta A. Preska on June 26, 2008 for lack of subject matter jurisdiction further certifying "that any appeal from this order would not be taken in good faith."

The basis of Judge Preska's opinion:

> (1): that such a claim for relief under 42 U.S.C. 1983 failed to allege facts showing that the Appellees acted under color of a state "statute, ordinance, regulation, custom or usage", 42 U.S.C. 1983, and private parties, thus, are not generally liable as the Director and Board of Trustees of the Museum are private parties not employed by any state or government entity, therefore a

cognizable claim under 1983 was not presented, and,

(2): the Appellant asserted that Appellees engaged in "gross negligence re (recommendations of the) Presidential Advisory Commission on Holocaust Assets further contending the Appellees violated its collections management policy by failing to adequately research the provenance of art works acquired by the Museum. Judge Preska again relied on her aforementioned opinion asserting the Appellees are private parties not subject to suit under 1983 and further that Appellants claims are not actionable under 1983 because Appellant did not allege a violation of a right protected by the United States Constitution of federal statues.

BASIS OF APPEAL

(1): It is a matter of Public Law and hence a public record that the City of New York established in the 1870's a relationship with the Museum that is described in the official "Procedures Manual for New York City's Designated Cultural Institutions" as being a "joint partnership between the City and a group of private citizens." This Procedures Manual further describes that New York State legislation was passed to incorporate the Museum, authorizing the City to construct the Museum's facilities and to lease its property to the Museum; the Museum, in turn, became responsible for acquiring and exhibiting its collections, thereby creating a synergistic relationship with the City which is clear. As a

result, the City maintains the buildings and pays with taxpayer monies for such as: repairs/alterations, fuel, waste removal, wages of employees providing essential maintenance/custodial/security, cleaning general areas, tools and supplies, insurance for buildings and fixtures, as well as administrative services. As a result of this "joint partnership" as legally defined, the Museum also enjoys a yearly subsidy of approximately US$ six million per year of taxpayer monies. It is therefore unconscionable to opine that Appellees are outside the scope and color of existing legislation, custom and usage so as to shield them from liability and hence subject matter jurisdiction as asserted by Judge Preska.

(2) Appellant's pro se complaint in the USDC for the Southern District of New York further alleged that a French painting acquired during a "JUDEN" (Jew) sale in Europe during the early Nazi occupation period in Europe and which the Museum subsequently acquired during the Nazi occupation of France in 1941, when most acquired art during such period failed to establish acceptable provenance, (as do some 400 paintings currently in the Museum), constituted looted art. The issue of looted art during the Holocaust period which deprived the majority of Jewish owners of their property rights gives rise to their own and their heirs constitutional right under the 4th Amendment to the United States Constitution in that their property be safeguarded and not be seized unlawfully. This constitutional question was properly invoked by Appellant. It is the added burden of the Museum, by their own written internal rules and regula-

tions, to particularly establish that provenance of any painting acquired during the Nazi period is clear and convincing so as to otherwise allow the true owners to assert title. This burden has not been assumed for several years in over 400 current paintings in the Museum.

Further, the Appellant acting pro se in the USDC for the Southern District of New York was entitled to a close and sympathetic reading, and that Federal Judge Preska's certification that any appeal from her order would not be taken in good faith suggests the order could be construed as being somewhat arbitrary, capricious and unreasonable suggesting further a lack of conformity to constitutional safeguards guaranteed to every U.S. citizen. By suggesting an appeal would not be taken in good faith raises the question of whether a fair and impartial appeal might necessarily follow, and this action should be examined further by the Court in this Appeal process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DR. RICHARD G. GRANT
22 Noel Court
Brewster, New York 10509
(845) 279-5387

Petitioner Pro Se

Dated: October 16, 2008

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 08-3742-cv
August 27, 2008

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of August, two thousand eight,

Present:

Hon. Jon O. Newman,
Hon. Guido Calabresi,
Hon. Sonia Sotomayor,
Circuit Judges.

DR. RICHARD G. GRANT,

Plaintiff-Appellant,

—v.—

DIRECTOR PHILLIPPE DE MONTEBELLO, METROPOLITAN MUSEUM OF ART, *et al.*,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

By: /s/ FRANKLIN PEREZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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08 CIV 5774

DR. RICHARD G. GRANT,

Plaintiff,

—against—

PHILIPPE DE MONTEBELLO, DIRECTOR, METROPOLITAN MUSEUM OF ART; BOARD OF TRUSTEES, METROPOLITAN MUSEUM OF ART; ALFRED N. PRUNNETT ENDOWMENT FUND, METROPOLITAN MUSEUM OF ART, established during the Nazi Occupation of Paris (6/40 - 8/45),

Defendants.

CIVIL JUDGMENT

Pursuant to the order issued June 26, 2008 by the Honorable Loretta A. Preska, United States District Judge, dismissing this action, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed. Fed. R. Civ. P. 12(h)(3). The Court certifies pursuant to

28 U.S.C. § 1915(a)(3) that any appeal from the Court's order would not be taken in good faith.

/s/ LORETTA A. PRESKA
LORETTA A. PRESKA
United States District Judge

Dated: June 26, 2008
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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08 CIV 5774

DR. RICHARD G. GRANT,

Plaintiff,

—against—

PHILIPPE DE MONTEBELLO, DIRECTOR, METROPOLITAN MUSEUM OF ART; BOARD OF TRUSTEES, METROPOLITAN MUSEUM OF ART; ALFRED N. PRUNNETT ENDOWMENT FUND, METROPOLITAN MUSEUM OF ART, established during the Nazi Occupation of Paris (6/40 - 8/45),

Defendants.

ORDER OF DISMISSAL

LORETTA A. PRESKA, United States District Judge:

Plaintiff brings the instant action *pro se* purporting to assert claims against the Director and Board of Trustees of the Metropolitan Museum of Art under the Fourth Amendment to the United States Constitution for "illegal seizure of looted

art." Compl. at 2.[1] Plaintiff paid the filing fee for this matter. For the reasons set forth below, the complaint is dismissed.

Discussion

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332. Under these statutes, federal jurisdiction is available only when a "federal question" is presented, 28 U.S.C. § 1331, or when plaintiff and defendant are of diverse citizenship and the amount in question exceeds $75,000. 28 U.S.C. § 1332. " '[I]t is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction.' " *United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Properties Meriden Square, Inc.*, 30 F.3d 298, 301 (2d Cir. 1994) (quoting *Manway Constr. Co. v. Housing Auth. of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983)). Moreover, "[w]here jurisdiction is lacking, . . . dismissal is mandatory." *Id.; see also* Fed. R. Civ. P. 12(b)(1) and 12(h)(3).

Federal Question Jurisdiction

Plaintiff invokes the federal question jurisdiction of the Court on grounds that the Director and Board of Trustees of the Metropolitan Museum of Art ("the Museum") violated the

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[1] This complaint was received by this Court's Pro Se Office on March 20, 2008.

Fourth Amendment to the United States Constitution because of the "illegal seizure of looted art." Compl. at 2. A claim for relief for a violation of constitutional rights under 42 U.S.C. § 1983 must allege facts showing that the defendant acted under color of a state "statute, ordinance, regulation, custom or usage," 42 U.S.C. § 1983, and private parties, thus, are not generally liable. *Rendell-Baker v. Kohn,* 457 U.S. 830, 838-42 (1982); *Tancredi v. Metropolitan Life Ins. Co.* 378 F.3d 220, 230 (2d Cir. 2004). As the Director and Board of Trustees of the Museum are private parties not employed by any state or government entity, a cognizable claim under § 1983 is not presented.

Plaintiff asserts that defendants engaged in "[g]ross negligence re: [recommendations of the] Presidential Advisory Commission on Holocaust Assets." Compl. at 2. He also contends that defendants violated the collections management policy by failing to adequately research the provenance of artworks acquired by the Museum. Compl., Exhibits (Collections Management Policy Nov. 9, 2005). In addition to the fact that defendants are private parties not subject to suit under § 1983, these claims are not actionable under § 1983 because plaintiff does not allege a violation of a right protected by the United States Constitution or federal statutes. *See Blessing v. Freestone,* 520 U.S. 329, 340 (1997) ("plaintiff must assert the violation of a federal *right,* not merely a violation of federal law"); *Driscoll v. Townsend,* 60 F. Supp. 2d 78, 81 (S.D.N.Y. 1999) (Section 1983 does not provide a claim for "violations arising solely out of state

law."). Given that plaintiff does not sufficiently allege the violation of a right protected by the United States Constitution or a federal statute, and because § 1983 claims are not cognizable against private parties, the complaint fails to adequately invoke the federal question jurisdiction of the Court.

Diversity of Citizenship

Plaintiff likewise fails to satisfy the requirements of 28 U.S.C. § 1332. As an initial matter, plaintiff alleges that all parties are residents of New York. Compl. at 1-2. "It is well established that for a case to come within this statute there must be complete diversity and that diversity is not complete if any plaintiff is a citizen of the same state as any defendant." *Cresswell v. Sullivan & Cromwell* 922 F.2d 60, 68 (2d Cir. 1990). Given that all parties are citizens of the same state, plaintiff cannot invoke the Court's diversity jurisdiction.

Although this Court would generally permit amendment of a fee-paid complaint to cure any defects before dismissing the case *sua sponte, Hughes v. Albany,* 76 F.3d 53 (2d Cir. 1996), there is no need to do so here as plaintiff presents no arguably meritorious basis for satisfying the subject matter jurisdiction of the Court. *See Mallard v. United States Dist. Court,* 490 U.S. 296, 307-08 (1989); *Pillay v. Immigration & Naturalization Serv.,* 45 F.3d 14, 17 (2d Cir. 1995) *(per curiam)* (discussing inherent authority to dismiss fee-paid cases).

Conclusion

According this *pro se* complaint the close and sympathetic reading to which it is entitled, *Haines v. Kerner,* 404 U.S. 519, 520-21 (1972) (per curiam), it reveals no basis for the exercise of subject matter jurisdiction over plaintiff's suit. *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 231 (1990) (the Court has an independent duty to examine the basis for jurisdiction); Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). The complaint is therefore dismissed for failure to state a claim over which the Court has subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1) and 12(h)(3). Under 28 U.S.C. § 1367(c)(3), the Court declines to supplemental jurisdiction over any state law claims. The Court certifies under 28 U.S.C. § 1915(a) that any appeal from this order would not be taken in good faith. *See Coppedge v. United States,* 369 U.S. 438, 444-45 (1962).

SO ORDERED

/s/ LORETTA A. PRESKA
LORETTA A. PRESKA
United States District Judge

Dated: June 26 2008
New York, New York